

**REMARKS**

Applicant has carefully reviewed the Application in light of the Office Action mailed December 16, 2004. At the time of the Office Action, Claims 2-6, 8-12, 14-19, 21-29, and 31-39 were pending in the Application. Applicant amends Claims 5, 11, and 17 and cancels Claims 2, 4, 10, and 16 without prejudice or disclaimer. Applicant's amendments and cancellations have been done to advance prosecution in this case and not to overcome prior art. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

**Section 103 Rejection**

The Examiner rejects Claims 2, 5-6, 8, 11-12, 14, and 17-18 under 35 U.S.C. §103(a), as being unpatentable over Patent No. JP02000209298A issued to Marinho et al. (hereinafter “*Marinho*”) in view of U. S. Publication No. US 2002/0024964 A1 issued to Baum et al. (hereinafter “*Baum*”). To defeat a patent under 35 U.S.C. §103, the claimed *combination* must be obvious. *Kimberly-Clark Corp. v. Johnson & Johnson*, 745 F.2d 1437, 223 U.S.P.Q. 603 (Fed. Cir. 1984). Therefore, it is essential to view the invention as a whole, taking each element into account as well as the advantages, properties, utilities, and results of the invention. *In re Chupp*, 816 F.2d 643, 2 U.S.P.Q.2d 1437 (Fed. Cir. 1987).

The Examiner rejects Claim 5 under 35 U.S.C. §103(a), as being unpatentable over *Marinho* in view of *Baum*. Applicant respectfully submits that the combination fails to disclose, teach, or suggest the limitations recited in Applicant's claims. For example, *Marinho* in combination with *Baum* fails to teach “the congested CoS is identified based on at least one of the following: dropped packets, a floating average of a queue size, and a current queue size for the CoS in the sector.” Accordingly, Applicant respectfully requests reconsideration and allowance of Claim 5 together with its dependents.

Independent Claims 11 and 17 recite certain limitations that, for reasons substantially similar to those discussed with reference to independent Claim 5, are not disclosed, taught, or suggested by the combination. Applicant respectfully requests reconsideration and allowance of independent Claims 11 and 17 together with their dependents.

**Allowable Subject Matter**

Applicant notes with appreciation the Examiner's allowance of Claims 3-4, 9-10, and 15-16. The Examiner indicates that the subject matter of these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. *Office Action*, p. 3. Claims 4, 10, and 16 have been canceled. Claims 5, 11, and 17 have been amended accordingly to include the limitations of canceled Claims 4, 10, and 16, respectively. Claims 3, 9, and 15 depend on allowable Claims 5, 11, and 17, respectively. Applicant respectfully submits that Claims 3, 9, and 15 are now allowable. Applicant further appreciates the allowance of Claims 19, 21-29, and 31-39. Accordingly, Applicant respectfully requests reconsideration and allowance of Claims 3, 5-6, 8-9, 11-12, 14-15, 17-19, 21-29, and 31-39.

**CONCLUSION**

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant believes that no fee is due. However, if this is not the case, the Commissioner is hereby authorized to charge any amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact its attorney, Barton E. Showalter, at (214) 953-6509.

Respectfully submitted,  
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